

# Department of Water and Power the City of Los Angeles

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August 28, 1987

Ms. Patti Cleary  
Environmental Scientist  
Toxics and Waste Management Division  
U.S. Environmental Protection Agency  
215 Fremont Street  
San Francisco, California 94105

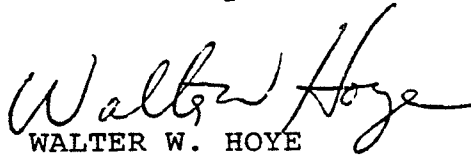
Dear Ms. Cleary:

Three-Party Agreement  
San Fernando Valley Groundwater Basin  
Groundwater Treatment Facility

Enclosed is the signed original and one copy of the Three-Party Agreement binding the Environmental Protection Agency, the State Department of Health Services (DHS), and the Los Angeles Department of Water and Power (LADWP) to a funding agreement for construction and operation of a 2,000-gallon-per-minute groundwater treatment facility in the North Hollywood/Burbank area of the San Fernando Valley groundwater basin, Los Angeles, California.

Thank you for your efforts in this project. It is our understanding that the Operable Unit Record of Decision (ROD) is contingent in part on this Agreement. If there is anything that the LADWP can do to further assist in the ROD process, please contact me at (213) 481-6150.

Sincerely,

  
WALTER W. HOYE  
Engineer of Design

Enclosures

cc w/enclosure:  
Mr. Alex Cunningham, DHS  
Mr. Nestor Acedera, DHS

THREE PARTY AGREEMENT  
FOR THE NORTH HOLLYWOOD/BURBANK TREATMENT  
FACILITY AT THE SAN FERNANDO AREA I  
SUPERFUND SITE

This is a contract among the United States Environmental Protection Agency (EPA), the Department of Water and Power of the City of Los Angeles (DWP) and the California Department of Health Services (DOHS), who agree as follows:

1. Authority

This State Superfund/Political Subdivision Contract ("SS/PSC") is entered into pursuant to sections 104(a)(1), (c)(2), and (c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and pursuant to California Health and Safety Code Section 25300 et seq.

2. Cooperative Agreement

EPA and DWP have entered into a Cooperative Agreement providing for a Superfund remedial action (operable unit) to be undertaken at the North Hollywood/Burbank site. A copy of the Cooperative Agreement is attached hereto as Exhibit A and incorporated herein by reference as though fully set forth. Exhibit A also includes a description of the site and the response actions taken in connection with the site. This Contract fulfills a requirement of the Cooperative Agreement by providing for the financing of the construction and continued operations costs for the project.

3. Duration of the Contract

The Contract shall become effective upon execution by the three parties and shall remain in effect until completion of the activities described in the Cooperative Agreement. The parties may agree to extend, by amendment, the duration of the Contract for the period necessary to implement any remedial activities that the parties agree to undertake beyond those defined in the Cooperative Agreement. This Contract may be terminated before the activities described in the Cooperative Agreement are completed if the parties jointly agree upon 30 days' written notice to the other parties.

4. Negation of Agency Relationship

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency among EPA, DWP and DOHS. Any standards, procedures, or protocols prescribed in this Contract or the Cooperative Agreement to be followed during the performance of obligations under this

Contract or the Cooperative Agreement are for assurance of the quality of the final product of the actions contemplated by the Cooperative Agreement, and do not constitute a right to control the actions of any party. EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of DWP or DOHS in any matter relating to the subject matter of this Contract, and DWP and DOHS (including their employees, agents, and contractors) are not authorized to represent or act on behalf of EPA or each other in any matter relating to the subject matter of this Contract.

5. Outside Parties

This Contract is intended to benefit only the DWP, DOHS and EPA. It extends no benefit or right to any other party not a signatory to this Contract. In addition, EPA does not assume any liability to other parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. sections 1346(b), 2671-2680. To the extent permitted by State law, neither DWP nor DOHS assumes any liability to any other parties with respect to losses due to bodily injury or property damage.

6. Parties' Representatives

Upon signing this Contract, the State's Department of Health Services certifies that the agency has legal authority to enter into the Contract on behalf of the State and to fulfill its terms. The State also certifies that DWP has the legal authority to enter into the Contract as a political subdivision of the State and to fulfill its terms. EPA has designated:

Patti Cleary  
215 Fremont St., San Francisco, CA 94150  
415 974-8501

to serve as Regional Project Manager for this Contract.  
The State has designated:

John Casey  
101 S. Broadway, Room 7011, Los Angeles, CA 90012  
213 620-2803

to service as State Project Officer for this Contract.  
The DWP has designated:

Henry Venegas  
111 N. Hope St., Los Angeles, CA 90012  
213 481-6157

to serve as the Local Project Manager for this Contract.

change their respective  
prior to the change. such a change shall be accomplished  
7. Duties of the Regional Project Manager, State Project  
Project Officer and Local Project Manager

The EPA Regional Project Manager, the State Project Officer and  
Local Project Manager have joint authority to make project  
decisions that do not enlarge the scope of the response actions  
at the site or the cost of the project covered by the Contract.  
In addition, the Local Project Manager will report modifications  
of schedules or activities to the EPA Project Manager and the  
State Project Officer.

8. Roles and Responsibilities

A. DWP

The DWP shall act as lead agency for the remedial action  
work conducted under the Cooperative Agreement and this SS/PSC.  
DWP shall arrange for the services of contractors to perform  
the remedial action work described in the Scope of Work (SOW)  
of the Cooperative Agreement. The DWP shall comply with all  
pertinent provisions of 40 CFR Parts 30 and 33 (including an  
accounting system that accurately reflects costs and retains  
records for cost recovery purposes under CERCLA) with respect  
to any procurement activities undertaken pursuant to this  
SS/PSC or the Cooperative Agreement or the expenditure of any  
funds provided to the DWP by EPA pursuant to this SS/PSC or the  
Cooperative Agreement.

The DWP shall ensure that any remedial action work  
conducted pursuant to this SS/PSC is in accordance with the SOW  
of the Cooperative Agreement and the Record of Decision (ROD)  
for the North Hollywood Operable Unit.

In overseeing the remedial action work described in the SOW  
of the Cooperative Agreement, the DWP shall ensure, to the  
maximum extent practicable, that the remedial action work is  
conducted in accordance with all applicable EPA guidance,  
including but not limited to the Superfund Remedial Design and  
Remedial Action Guidance manual, Vols. I & II, published by  
OERR in June 1986 and subsequent revisions and directives.

The DWP will inform EPA and DOHS of any proposed changes in  
the scope of remedial action work under the Cooperative Agree-  
ment. No changes in scope of work shall be made unless  
approved by EPA and DOHS, and incorporated by written amend-  
ment into the Cooperative Agreement.

The DWP shall consult with EPA and DOHS during all phases  
of remedial action work.

The DWP shall submit all data, analyses, summaries, studies plans, reports, specifications, contract documents, recommendations or other pertinent information ("documents") required or generated under this SS/PSC or the Cooperative Agreement to EPA and DOHS for review and concurrence prior to issuance or implementation.

B. DOHS

DOHS may review all documents submitted by DWP and concur on such documents, if appropriate. In the event that DOHS does not provide DWP and EPA with written comments or with a written request for an extension of time within thirty (30) days of receipt of any document DOHS will be deemed to have concurred on the document.

DOHS shall review any substantive changes in the scope of work or project costs under the Cooperative Agreement. No changes in the scope of work or project costs may be made without the written concurrence of EPA and DOHS. Any such changes must be embodied as amendments to the Cooperative Agreement.

DOHS may consult with EPA and DWP during all phases of remedial action work, and shall provide written comments/concurrences when appropriate.

C. EPA

EPA may review all documents submitted by the DWP or DOHS under this SS/PSC or the Cooperative Agreement, and concur on such documents, if appropriate. In the event that EPA does not provide DOHS and the DWP with written comments or with a written request for an extension of time within thirty (30) days of receipt of any document, EPA will be deemed to have concurred on the document.

EPA shall review any proposed substantive changes in the scope of work or project costs under the Cooperative Agreement. No changes in the scope of work or project costs may be made without the written concurrence of EPA and DOHS. Any such changes must be embodied as amendments to the Cooperative Agreement.

EPA may consult with DWP and DOHS during all phases of remedial action work, and shall facilitate the resolution of any disputes which may arise under this SS/PSC.

9. Coordination of Parties Participating in Response

The following agencies and/or entities will participate in the remedial action at the North Hollywood/Burbank site conducted pursuant to this Contract: EPA, the State and the DWP. EPA will oversee the participation of each in close coordination with the State Project Officer and the Local Project Manager.

Any party which becomes aware of problems that arise and/or significant changes in the scope of the participation of any one agency from that described here will inform the other parties.

The DWP shall incorporate, to the maximum extent practicable, any EPA and DOHS comments on any documents submitted pursuant to this SS/PSC or the Cooperative Agreement into the final remedial action.

10. Emergency Response Action During a Remedial Project

Any emergency response activities conducted pursuant to the National Contingency Plan (NCP), 40 CFR section 300.65, shall not be restricted by the terms of this Contract. EPA, in consultation with DWP and DOHS, may suspend or modify the remedial activities defined in the Cooperative Agreement during and/or subsequent to such emergency response actions. To the extent such actions are consistent with this Contract and the Cooperative Agreement, the parties may agree to modify the DWP's share of responsibility and DOHS's financial obligation hereunder. Otherwise, the parties' respective duties and obligations for any emergency response actions at the Site shall be the subject of a separate agreement.

11. Responsible Party Activities

If EPA or DOHS reach an agreement with any responsible parties to undertake all or part of the remedial activities described in the SOW for the Cooperative Agreement, the Contract shall be amended to revise the SOW accordingly.

12. The National Contingency Plan (NCP)

All activities conducted under this Contract shall be consistent with the NCP, 40 CFR Part 300. As the NCP is revised to reflect statutory changes, the revised NCP will apply.

13. State Capital Costs Sharing

DOHS agrees that it is responsible and will pay for 10 percent of the applicable remedial capital costs as defined in the cooperative agreement including change orders and claims agreed to by the EPA, as provided below. The current estimate of the applicable total remedial capital cost is \$1,492,700 dollars. The State's share is \$149,270. DWP agrees to monitor the amounts expended pursuant to this Contract and to notify EPA and DOHS in writing at the earliest opportunity in the event that it appears that the amount stated above will not be sufficient to perform this Contract in full.

Payment will be made in the following manner:

DWP agrees that it will promptly review, audit and pay DWP costs incurred for project materials, labor and services and approved invoices received from the several contractors according to the terms and conditions of each individual contract. Thereafter, DWP will draw down against a letter of credit established by EPA for its 90 percent allocated share and will send an invoice to DOHS for its 10 percent allocated share of the construction costs, which invoice DOHS agrees to pay within 30 days of receipt. The parties further agree that for each invoice period DWP's statement to EPA and invoice to DOHS will show the total expenditure pursuant to each of the individual contracts, and above-described DWP costs as well as the determination of the respective allocated shares for EPA and DOHS. DOHS & EPA have the right to withhold payment if billings are improper. DWP will include an informative summary of work progress with it's invoices to DOHS. Each party will be granted access to each others books and records and their subcontractors to conduct audits if deemed necessary. Each party reserves the right to contract with an outside auditor to conduct periodic reviews of project records.

Subject to the provisions of section 33 hereunder, payments made by DOHS pursuant to this Contract shall be credited toward DOHS's cost share obligation under CERCLA § 104(c)(3).

14. Continued Operations Costs Sharing

Pursuant to CERCLA section 104(c)(6), EPA is authorized to cost-share in the continued operations of the treatment plant for Area 1 until the Record of Decision (ROD) establishing the final remedy for the San Fernando site for Area I is signed. EPA will provide 90% of the costs of continued operations of the remedial action provided under this contract, consistent with the approved plan for continued operations, for a period of time beginning with the date of completion of the activities described in the cooperative agreement and terminating thereafter at the time of commencement of operation of the final remedial action for the San Fernando sites.

DOHS agrees that it is responsible for paying 10 percent of the continued operations costs defined in the cooperative agreement. Although the State is responsible for the cost share, the political subdivision, DWP, agrees to provide the 10 percent DOHS cost share for continued operations. At the conclusion of EPA's participation, which will be when the ROD is signed for the final remedial action for the San Fernando site for Area I, DWP and the State must assure full responsibility for operations and maintenance. When operation and

maintenance costs are determined, the contract and cooperative agreement will be amended accordingly. Payment will be made in the following manner:

DWP will draw down against a letter of credit established by EPA for its 90 percent allocated share.

DWP will include their 10 percent cost share in their cooperative agreement application for the remedial action operable unit. The State guarantees payment of all continued operations, and operations and maintenance costs in the event of default by DWP.

During the remedial action, DWP shall submit to EPA and DOHS for review and approval a continued operations plan (COP). At a minimum, the plan shall include: a description and schedule of COP activities; an estimate of the duration of such activities; remedy performance standards; a contingency plan for abnormal occurrences; safety requirements for COP activities; staffing requirements; equipment and materials requirements; a monitoring program to demonstrate the continued effectiveness of the remedial action; annual COP costs and a description of site use and disposition of facilities following completion of continued operations. Should major changes to the statement of work occur during implementation of the remedial action, DWP agrees to modify its COP, with the concurrence of EPA and DOHS, to reflect these changes.

15. Off-Site Treatment, Storage, or Disposal

Pursuant to CERCLA section 104(c)(3)(B), the State is required to assure the availability of a hazardous waste facility. DWP, in its invitation for bids for the remedial action, will require respondents to provide adequate capacity for waste disposal at a facility (or facilities) that meets all applicable requirements of the Resource Conservation and Recovery Act (RCRA) and that is consistent with EPA's off-site disposal policy. A RCRA compliance inspection shall be completed by EPA or DHS for the waste facility within six (6) months prior to the receipt at the designated facility of wastes from the site. Prior to award of the contract, the EPA Regional office in which the facility is located will review the results of the compliance inspection and other available information to determine if the facility meets the criteria set forth by EPA.

16. Access to the Site and Permits

DWP agrees to satisfy all Federal, State, and local requirements for permits and approvals. The State, to the extent of its legal authority, shall secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to this Contract. As requested by EPA, the State also shall



obtain or assist EPA in obtaining any permits that are necessary to complete satisfactorily the activities described in the SOW.

17. State Access During Remedial Response

Representatives of DWP and DOHS and EPA shall have access to the site to review work in progress and shall comply with the site safety plan. No ~~other~~<sup>186</sup> party shall be responsible for any harm to any other parties' representatives or other persons arising out of or otherwise resulting from any act or omission by EPA, DOHS, or DWP or their respective representatives during the course of any on-site visit.

18. Site Safety Plan

DWP will be responsible for the development and implementation of a site safety plan for the site where remedial response is contemplated by this Contract. This plan will be consistent with the requirements of the NCP and applicable Federal and State safety standards and guidance.

19. Community Relations

The DWP, DOHS, and EPA agree to encourage public participation in agency activities relating to the Superfund remedial action operable unit, which is planned to protect public health and the environment. DWP and the State agree to fully assist EPA, the lead agency for conducting community relations, in accordance with the San Fernando Valley Basin Community Relations Plan (January 1986), "Community Relations in Superfund: A Handbook" (draft, March 1986), and the National Contingency Plan (November 1985), and any forthcoming revisions to these documents.

Specifically, tasks include, but are not limited to:

- a) Establishing and maintaining information repositories throughout the Basin and in the City of Los Angeles.
- b) Expanding and updating EPA's computer mailing system by adding and revising addresses from community elements such as residents, agencies, elected officials, community groups, and media.
- c) Transmitting copies of all North Hollywood/Burbank groundwater treatment facility correspondence between local and state agencies and the aforementioned community elements to an EPA project representative.
- d) Organizing community meetings: securing location and room setup, obtaining equipment, and arranging for various presentations and programs.
- e) Assisting with public meeting facilitation and recording.

- f) Providing text, graphics, and photographs to be used in summaries of technical documents, fact sheets, briefings, exhibits, and community presentations.

20. Confidential Information

At EPA's request and to the extent allowed by State or local law, the DWP shall make available to EPA any information in its possession concerning the site. EPA will make available to the DOHS or the DWP any information in its possession concerning the work being conducted pursuant to this Contract if the DOHS or the DWP submits a request for such information. If the DOHS or the DWP provides any information to EPA under a claim of confidentiality, this information will be treated in accordance with 40 CFR Part 2 if the DOHS or the DWP has given EPA notice of a claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the DOHS or DWP advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice.

21. Cost Effective Response

CERCLA section 104(c)(4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the fund to respond at other sites. If DWP requests additional fund-financial response at the site, EPA will evaluate the request against available fund monies and whether it is consistent with the NCP. This Contract does not commit EPA to future funding for response actions at the site.

22. Change Order and Claims Management

DWP or its agent(s) will conduct technical and administrative reviews of any contractor change order requests or claims. These reviews will examine the technical basis for the change order requests or claims and will determine whether they are merited. DWP will inform the EPA and DOHS when total project change orders exceed 75 percent of the construction contingency fund.

23. Reporting Requirements

The DWP agrees to submit quarterly progress reports to the RPM and SPO, detailing technical progress of the project, changes to the SOW, and other major changes to the project.

24. Pre-final Inspections

DWP will participate in the pre-final construction conference

with EPA and DOHS to be held upon preliminary project completion, to discuss the remedy, continued operations and O&M requirements. DWP will provide EPA and the State fourteen (14) days advance notice of, and an agenda for, this meeting. The EPA, State, and DWP also shall participate in the pre-final inspection of the remedy to determine the project's completeness. The Local Project Manager will provide the pre-final inspection report to the RPM and the SPO for review. This report will outline outstanding construction items, actions required to resolve them, and anticipated completion dates for these actions. The State and EPA shall return any comments to the Local Project Manager within fifteen (15) days.

25. Final Inspection

Following completion of remedial action, DWP, the State, EPA, and/or the remedial contractor will jointly inspect the project to confirm that all outstanding construction items are resolved. The Local Project Manager shall be responsible for submitting the final inspection report describing any outstanding items and their resolutions to the RPM and the SPO.

26. Remedy Shakedown Period

The remedy implemented pursuant to the Cooperative Agreement includes construction of a water treatment system. A facility shakedown period of 6 months is necessary to demonstrate the effectiveness of the remedy. This period will be considered part of the remedial action. The shakedown period includes oversight of the system, operational testing, operator training, adjustment of the continued operations plan, and development of accurate continued operations cost estimates, as outlined in the Cooperative Agreement. The DWP shall coordinate with the EPA Project Manager and the remedial contractor representative in the performance of these activities.

27. Enforcement and Cost Recovery

A. Notice of Intent to Settle or Initiate Proceedings

EPA, the State and DWP agree that, with respect to the claims which each may be entitled to assert against any third persons (herein referred to as the "responsible party" whether one or more) for the reimbursement of any services, materials, monies, or other thing of value expended by EPA, the State, or DWP for response activities at the site(s) described in this Contract, neither EPA, the State, nor DWP will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party for the recovery of such sums except after having given notice in writing to the other parties to this Contract not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings.

No party to this Contract shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, unless party agrees, and authority to do so is hereby expressly negated and denied.

B. Cooperation and Coordination in Cost Recovery Efforts

EPA, DWP and the State agree that they will cooperate in and coordinate efforts to recover their respective costs of response actions taken at the site(s) described herein, including the negotiation and settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents of information which may be confidential under the provisions of any applicable State, Federal, or local law or regulation.

C. Judicial Action

EPA, DWP and the State agree that any judicial action taken by any party pursuant to CERCLA as amended against a potentially responsible party for recovery of any sums expended in response actions at the site described herein shall be filed in the United States District Court for the judicial district in which the site described in this Contract is located, or in such other judicial district of the United States District Courts as may be authorized by sections 113 of CERCLA and agreed to in writing by the parties to this Contract.

D. Litigation Under CERCLA Section 106 and 107

Signature of this Contract does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under section 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, or any other statutory provision or common law.

28. Transfer of Guarantees and Warranties

Upon DOHS's and DWP's acceptance of the remedy and assumption of responsibility for O&M, all guarantees and warranties associated with the remedy will transferred to DWP's possession. The DOHS will provide for such transfer in all agreements for remedial action negotiated with response contractors.

29. NPL Deletion

At the successful completion of the remedial action at the site, performed pursuant to this Contract, the State may

request EPA to delete the site from the National Priorities List (NPL). The State agrees to participate in the NPL deletion process by commenting on the proposed site deletion and by reviewing the site NPL deletion package.

30. Failure to Comply with Terms of the Contract

If DWP or the State fails to comply with the terms of this Contract, EPA may proceed under the provisions of section 104(d)(2) of CERCLA as amended. If EPA fails to comply with any requirements of this Contract, DWP or the State, after providing sixty (60) days notice, may seek in the appropriate court of competent jurisdiction to enforce the Contract.

31. Dispute Resolution

The parties shall use their best efforts to resolve informally any disputes which may arise under this SS/PSC by the representatives designated in paragraph six. If the representatives are unable to agree upon an appropriate resolution, the dispute shall be elevated to the EPA Toxics Division Director, State and DWP, then to the Deputy Regional Administrator, Director of DOHS and the General Manager of DWP who will resolve the dispute within 30 days.

If the Parties are unable to reach agreement on the resolution of a dispute under the SS/PSC, the EPA Regional Administrator shall resolve the dispute. The Regional Administrator's determination shall be reflected in the final remedial action.

32. Amendments to the Contract

Any change in this Contract must be agreed to, in writing, by all three parties hereto, except as provided elsewhere in the Contract.

33. Contract Closeout

This Contract will remain in effect until a final cost reconciliation is made to ensure that both the State costs, being provided by DWP and EPA have contributed their full cost shares for the project(s) conducted pursuant to it. This includes: satisfactory completion of the remedial activities described in the SOW; the final accounting of all


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project costs, including all change orders and outstanding contractor claims; EPA receipt of documentation of all costs incurred; verification by audit of DWP's eligible costs for the water treatment plant; and receipt of all DWP provided State cost share payments made under this Contract.

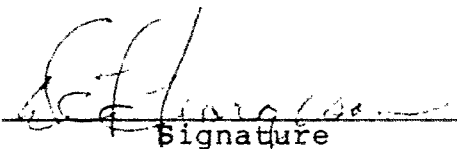
Jeff Zelikson  
Acting Director  
Toxics and Waste Management Division  
Environmental Protection Agency

  
\_\_\_\_\_  
Signature  
7/6/87  
\_\_\_\_\_  
Date

Alex R. Cunningham  
Chief Deputy Director  
California Department of Health Services

  
\_\_\_\_\_  
Signature  
8/25/87  
\_\_\_\_\_  
Date

Duane L. Georgeson  
Assistant General Manager-Water  
Los Angeles Department of Water and Power

  
\_\_\_\_\_  
Signature  
**AUG 28 1987**  
\_\_\_\_\_  
Date